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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
		SCS-540-560
Application Number	Filed	
10/529,227	March 25, 2005	
First Named Inventor		
Harris		
Art Unit	Examiner	
1743	N. Turk	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> Applicant/Inventor</p> <p><input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> Attorney or agent of record <u>27,393</u> (Reg. No.)</p> <p><input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p>		


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March 7, 2007

Date

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**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final rejection mailed November 7, 2006 (Paper No. 20061101).

Error #1. The Examiner errs in concluding that the Kim reference teaches "a path which includes a plurality of mutually inverted generally U-shaped bends"

Applicants' independent claim 1 requires the patterned conductive thin film track be connected between two common terminals and that the track follow "a path which includes a plurality of mutually inverted generally U-shaped bends."

In order to support the rejection of claims 1-5 and 7 under 35 USC §102 as being anticipated, it is incumbent upon the Examiner to establish where every claimed structure and claimed structural interrelationship set out in independent claim 1 is disclosed in the Kim reference since claims 2-5 and 7 ultimately depend from claim 1. The Court of Appeals for the Federal Circuit has confirmed in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." (emphasis added).

While the Examiner alleges that "corrosive tracks disclosed and shown in Kim are mutually inverted generally U-shaped bends," a review of Figures 1, 2, 3 and 5 do not illustrate any such "U-shaped bends." In fact, the reference establishes that the only conductive thin film track that are disclosed are in fact straight "line tracks 41" which extends between two distributing units 50.

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Assuming that the units 50 correspond to Applicants' claimed "at least two common terminals," the thin lines 41 must show "a path which includes a plurality of mutually inverted generally U-shaped bends." Notwithstanding the fact that the Examiner alleges that Kim contains such a disclosure, Applicants' detailed review of Kim fails to find any disclosure of anything other than a straight line path for each of thin lines 41 connecting the two common terminals. Should the Examiner still contend that there is any disclosure of "U-shaped bends" in the tracks in Kim, he is respectfully requested to identify the column and line number as well as the Figure and element number of such structure.

As amply demonstrated, Applicants' claimed subject matter, i.e., "a path which includes a plurality of mutually inverted generally U-shaped bends" is simply not shown in the cited prior art reference of record, i.e., Kim. As a result, the Examiner has not made out a case of anticipation of claims 1-5 and 7 under the current Federal circuit interpretation of 35 USC §102.

Error #2. The Examiner's allegation that the subject matter of claim 5 is anticipated by the Kim reference is incorrect

Applicants' dependent claim 5 specifies that "the minimum separation between adjacent corrosive tracks is preferably at least as great as the average width of said corrosive tracks."

The Examiner does not identify any portion of the Kim specification or figures which allegedly discloses this claimed interrelationship in claim 5. In fact, a review of Figures 1 and 5 of the Kim reference shows that the separation between adjacent thin line 41 elements is less than the width of those elements. Thus, Kim teaches that the minimum separation between adjacent corrosive tracks is less than the average width of the corrosive tracks and not "at least as great as the average width of said corrosive tracks" as required by dependent claim 5 (emphasis added).

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As a result of the above, the Kim reference does not anticipate the subject matter of dependent claim 5.

Error #3. The Examiner erroneously combines the Kim and other references in a rejection of claims 1-22

In the outstanding Final Rejection, between pages 4 and 12, the Examiner rejects all pending claims as being obvious in view of the Kim reference in further view of various additionally cited references. Claims 2-22 all depend directly from independent claim 1. As noted above, the Kim reference fails to teach a plurality of "mutually inverted generally U-shaped bends" (the above discussion of the Kim reference is herein incorporated by reference). No other reference is alleged to teach this "generally U-shaped bend" limitation. As a result, if Kim we combined with the other references, there would be no disclosure of the claim 1 subject matter.

The Court of Appeals for the Federal Circuit has consistently held that "the PTO has the burden under §103 to establish a *prima facie* case of obviousness." *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Court held that the PTO "can satisfy this burden only by showing some objective teaching in the prior art." Here, the Examiner has shown no objective teaching in either the Kim reference or any other cited reference for Applicants' claimed "path" which includes the "generally U-shaped bends." If the combination of references does not disclose the claimed invention, the rejection is improper.

Error #4. The Examiner fails to appreciate that the Kim references would lead one of ordinary skill away from the claimed invention

The Kim reference actually suggests the use of thin line 41 comprise a straight line. In each of the embodiments disclosed and discussed in the Kim reference, thin line 41 is a straight

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line connection between the two common terminals 50. Thus, the total teaching of the Kim reference not only fails to disclose the subject matter of Applicants' claim 1, it would lead one of ordinary skill in the art away from the claimed invention, i.e., it would teach one of ordinary skill in the art to utilize a straight line connector between the two common terminals.

The Court of Appeals for the Federal Circuit in *In re Fine* went on to say that it is "error to find obviousness where references 'diverge from and teach away from the invention at hand'." *Id.*, at 1599. As noted above, the Kim reference in teaching straight "thin line 41" would lead one of ordinary skill in the art away from Applicants' path which includes "generally U-shaped bends."

Thus, with respect to each and every obviousness rejection which is based upon the Kim reference, Kim would lead one of ordinary skill in the art away from Applicants' claimed invention, thereby obviating any further rejection of claims 1-22 over the primary Kim reference. The Examiner has not rebutted the presumption of Kim teaching away from the cited combinations by any evidentiary showing as to why or how one of ordinary skill in the art would think to substitute "generally U-shaped bends" for the straight "thin line 41" segments in Kim.

SUMMARY

There is no serious dispute that Kim fails to disclose the claim 1 limitation of "generally U-shaped bends." Additionally, there would appear to be no dispute that Kim fails to teach the claim 5 limitation of a separation between tracks "at least as great as the average width of said corrosive tracks." The Examiner does not allege that these claim requirements, missing from Kim, are taught in any other prior art reference. The Examiner fails to appreciate that the Kim teaching of straight "thin line 41" would lead those of ordinary skill away from the "generally U-

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shaped bends" and thereby avoid any possibility of obviousness. The Examiner supports neither his claim of anticipation nor his claim of obviousness.

As a result of the above, there is simply no support for the rejection of Applicants' independent claim 1 or claims dependent thereon under 35 USC §102 and/or §103. Applicants respectfully request that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.